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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,069	02/27/2004	Joachim Feld	2003P00335US	9170

7590 02/17/2010  
SIEMENS CORPORATION  
INTELLECTUAL PROPERTY DEPT.  
170 WOOD AVENUE SOUTH  
ISELIN, NJ 08830

EXAMINER
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WEIDNER, TIMOTHY J

ART UNIT	PAPER NUMBER
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2476

MAIL DATE	DELIVERY MODE
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02/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/789,069</p>	<p><b>Applicant(s)</b> FELD ET AL.</p>	
	<p><b>Examiner</b> Timothy J. Weidner</p>	<p><b>Art Unit</b> 2476</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Ayaz R. Sheikh/  
Supervisory Patent Examiner, Art Unit 2476

Continuation of 11. does NOT place the application in condition for allowance because: Arguments are not persuasive.

Regarding rejections under 35 USC 103, arguments state the Shaffer reference may not "define a phase in a transmission cycle based on a receive time of the end of a telegram or data packet." Specifically, "the Shaffer reference does not define a phase in a transmission cycle based on the receive time of the end of a telegram or data packet. The rejection cites Shaffer at col. 4, line 59 - col. 5, line 10). This passage concerns backoff times as though they somehow amount to an equivalent for defining a distinct phase in a transmission cycle based on the receive time of the end of a data packet." Examiner respectfully disagrees.

Shaffer teaches network devices that extend a backoff time, before sending a packet, to the end of a current transmission on a bus ("phase"). Extension of a backoff time may be treated as characterizing a transmission phase based on a receive time of the end of a packet because detecting activity on the bus may be treated as receiving the packet. Therefore, when a device determines the end time of activity on a bus, it determines receiving the end of the packet (the end of a "phase") (columns 4-5, lines 59-10). Thus, the transmission of isochronous data appears to be the same as a phase ("phase" interpreted with broadest reasonable interpretation, see MPEP 2111).

Further, arguments state "In this regard, applicants submit that confusion results regarding the context and meaning of the statement in Shaffer (col. 5, lines 1 - 2) that "the backoff window will be automatically extended to the end of the isochronous transmission ..." but consistency is had by recognizing that the author is only stating that nonisochronous data is not sent while isochronous data is being transmitted; and this statement does not indicate that the end of one isochronous transmission marks the end of a phase reserved for multiple isochronous transmissions." Examiner respectfully disagrees.

As stated above, extension of a backoff time may be treated as characterizing a transmission phase based on a receive time of the end of a packet because detecting activity on the bus may be treated as receiving the packet. Further, applicant repeatedly states that Shaffer may not explicitly teach "a phase reserved for multiple isochronous transmissions", however the multiple-transmissions-per-phase limitation has been repeatedly addressed with the Lee reference to make up for such a potential deficiency of Shaffer.

Finally, as a suggestion, applicant might consider a potential amendment. One potential amendment that may overcome the Shaffer reference would be to distinguish the claims from the prior art by claiming the type of network that the data telegrams are being sent over, e.g. "Data network 15 is a switched network, which is to say that in contrast to what is termed a shared-medium network the communication participants in network 15 do not communicate with each other over a shared communication medium but over point-to-point communication connections 20 - 32." (see applicant's specification, paragraph 16, first paragraph in "DETAILED DESCRIPTION OF INVENTION"). As a reminder, the claims are read in accordance with MPEP 2111.01, i.e. the claim limitations are given their broadest reasonable interpretation in light of the specification without improperly importing limitations from the specification into the claims. Therefore, without such limitations in the body of the claim, the Shaffer and Lee references, which appear to use a shared-medium network, are reasonably applicable.